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FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
IN RE: FELA ASBESTOS CASES
CIVIL ACTION NO. 02-C-9500

2006 DEC 14 PM 12:52

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

RECEIVED CLERK
MARSHALL COUNTY COURT

JERRY M. ABBOTT, et al.,
(Originally filed in the Circuit Court of Marshall County, Civil Act. No. 05-C-63M)

PEGGY TACKETT, Administratrix of the Estate of
WALK TACKETT, Deceased,
(Originally filed in the Circuit Court of Marshall County, Civil Action No. 06-C-27M)

CHARLES S. ADAMS, et al.,
(Originally filed in the Circuit Court of Harrison County, Civil Action No. 06-C-72)

HERBERT J. ADAMS, et al.,
(Originally filed in the Circuit Court of Harrison County, Civil Action No. 06-C-182)

Plaintiffs,

v.

CSX TRANSPORTATION, INC.,

Defendant.

PAUL D. ANTHONY, et al.,
(Originally filed in the Circuit Court of Mercer County, Civil Action No. 06-C-188)

CHARLES C. ALBRIGHT, et al.,
(Originally filed in the Circuit Court of Mercer County, Civil Action No. 06-C-409 to 588)

v.

NORFOLK SOUTHERN RAILWAY COMPANY

JOSEPH E. BAKER, et al.,
(Originally filed in the Circuit Court of Brooke County, Civil Action No. 06-C-89)

v.

CONSOLIDATED RAIL CORPORATION, et al.

AGREED ORDER

On July 10, 2006, came the parties by Robert F. Daley, for the Plaintiffs and Luke Lafferre, for the Defendants CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSRC) for a hearing on the "Defendant's Motion to Dismiss for Violation of the Non-Resident Venue Statute" as it related to certain Plaintiffs in the matters of Jerry Abbott, et al. v. CSX Transportation, Inc. and Paul D. Anthony, et al. v. Norfolk Southern Railway Company.

The parties agree that the cases were brought under the Federal Employers Liability Act, 45 U.S.C. §51, et seq. (FELA). The parties further agree that these cases were filed after June 4, 2003, the effective date of the non-resident venue provisions of West Virginia Code §56-1-1, making them subject to those provisions. In addition, the parties agreed that certain of the Plaintiffs in these actions are not residents of West Virginia, that neither all nor a substantial part of the acts or omissions giving rise to the certain Plaintiff's claims asserted in these cases occurred in this State, and that at the time the cases were filed there was no impediment to the filing of the cases in venues other than the State of West Virginia.

The Defendants relied on these facts and the non-resident venue provisions of the West Virginia Code §56-1-1 in bringing their motions. The Plaintiffs argue that the non-resident venue provisions of West Virginia Code §56-1-1 violate the United States Constitution as well as the Constitution of the State of West Virginia. Before ruling on these motions, the court had the benefit of the recent decision of the West Virginia Supreme Court of Appeals in Morris v. Crown Equipment, Docket No. 32751, 2006 W. Va. LEXIS 69 (June 29, 2006). This Court distinguishes the holding in Morris based on the fact that in Morris there was a West Virginia resident defendant, and in these cases the defendants are all non-residents.

Through an ORDER entered August 14, 2006, the Honorable Arthur M. Recht, granted the Defendant's Motion to Dismiss for Violation of the Non-Resident Venue Statute dismissing certain Plaintiffs in the matters of Jerry Abbott, et al. v. CSX Transportation, Inc. and Paul D.

Anthony, et al. v. Norfolk Southern Railway Company and through an ORDER entered on September 11, 2006, Judge Recht, granted the Defendant's Motion to Dismiss for Violation of the Non-Resident Venue Statute dismissing certain Plaintiffs in the matter of Charles S. Adams v. CSX Transportation, Inc.

Since that time, the Defendant's have filed similar Motions to Dismiss which have not yet been ruled upon as to certain plaintiffs in the matters of Herbert J. Adams, et al. v. CSX Transportation, Inc., Peggy Tackett v. CSX Transportation, Inc., Joseph Baker, et al. v. Consolidated Rail Corporation, et al., and Charles C. Albright, et al. v. Norfolk Southern Railway Company.

On November 16, 2006, came the parties by Robert F. Daley, for the Plaintiffs and Luke Lafferre and Kendra Smith for the Defendants CSXT, NSRC and Consolidated Rail Corporation (CONRAIL) for a hearing on the Plaintiffs' "Motion to Consolidate Actions for Appeal and Motion to Extend Time Period for Filing Plaintiff's Petition for Appeal". The parties agree that all of the aforementioned actions involve similar issues of law and fact and that judicial economy and efficiency would best be served by consolidating the matters for the sole purpose of appeal.

After having heard argument of the parties, it is hereby ORDERED, ADJUDGED and DECREED that:

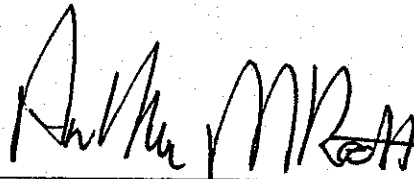
- 1) The ORDER entered on August 17th, 2006, by the Honorable Arthur M. Recht, on the Defendant's Motion to Dismiss as to certain Plaintiffs listed on Exhibit "A" in the matter of Jerry Abbott, et al. v. CSX Transportation, Inc. and Exhibit "B" in the matter of Paul D. Anthony, et al. v. Norfolk Southern Railway Company is hereby VACATED.

- 2) The ORDER entered on September 11, 2006, by the Honorable Arthur M. Recht, on the Defendant's Motion to Dismiss as to certain Plaintiffs listed on Exhibit "C" in the matter of Charles S. Adams v. CSX Transportation, Inc. is hereby VACATED.
- 3) The Defendant's Motions to Dismiss as to certain plaintiffs listed on Exhibits "A", "B" and "C" in the matters Jerry Abbott, et al. v. CSX Transportation, Inc., Paul D. Anthony, et al. v. Norfolk Southern Railway Company and Charles S. Adams v. CSX Transportation, Inc. are hereby GRANTED.
- 4) In the matter of Herbert J. Adams, et al. v. CSX Transportation, Inc., the Defendant's Motion to Dismiss as to certain Plaintiffs listed on Exhibit "D" is hereby GRANTED.
- 5) In the matter of Peggy Tackett v. CSX Transportation, Inc., listed on Exhibit "E" the Defendant's Motion to Dismiss is hereby GRANTED.
- 6) In the matter of Joseph Baker, et al. v. Consolidated Rail Corporation, et al., the Defendant's Motion to Dismiss as to certain plaintiffs listed on Exhibit "F" is GRANTED.
- 7) In the matter of Charles C. Albright, et al. v. Norfolk Southern Railway Company, the Defendant's Motion to Dismiss as to certain Plaintiffs listed on Exhibit "G" is hereby GRANTED.
- 8) The plaintiffs' objections to the foregoing are noted.

- 9) All of the foregoing matters involve similar issues of fact and law and the concepts of judicial economy and efficiency would be best served by consolidating the matters into a single action for purposes of the plaintiff's forthcoming Petition for Appeal to the West Virginia Supreme Court.
- 10) The matters of Jerry Abbott, et al. v. CSX Transportation, Inc., Paul D. Anthony, et al. v. Norfolk Southern Railway Company, Charles S. Adams v. CSX Transportation, Inc., Herbert J. Adams, et al. v. CSX Transportation, Inc., Peggy Tackett v. CSX Transportation, Inc., Joseph Baker, et al. v. Consolidated Rail Corporation, et al., Charles C. Albright, et al. v. Norfolk Southern Railway Company are consolidated for the sole purpose of appeal.
- 11) The plaintiff has four (4) months from the date of entry of this ORDER to file its Petition for Appeal with regard to all of the foregoing matters.

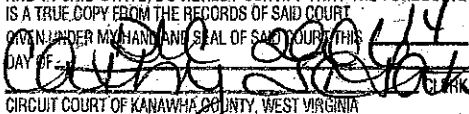
The Clerk is directed to provide a certified copy of this Order to all counsel of record.

Signed: This the 14 day of December, 2006.

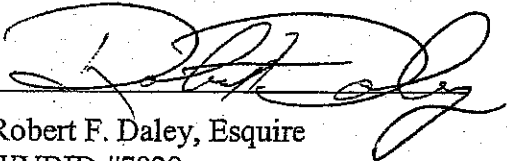


ARTHUR M. RECHT, JUDGE
West Virginia Asbestos Mass Litigation Panel

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF 14
CATHY S. GATSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

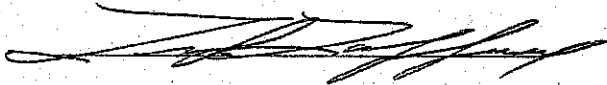


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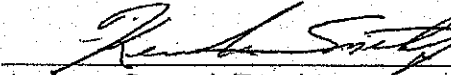
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